Supreme Court, U.S.
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No. 94-0473

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

GEORGE GILMORE MARTIN and
JULIA S. MARTIN

Petitioner,

vs.

BANK OF FLOYD

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

Reply Brief To Respondent's Brief In Opposition

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BEST AVAILABLE COPY

The Bank of Floyd's reasons for denying the Martins' Petition for Writ of Certiorari are not valid for the following reasons:

I

The Martin's case presents substantial due process issues vitially affecting over 50,000,000 Americans with mortgage liabilities exceeding 2.5 Trillion dollars. The Supreme Court of the United States by deciding this case in favor of the Martins can give over 50 million Americans, in the words of Justice William O. Douglas, "some assurance that they will not be saddled with more than the amount of their obligations". Gelfert v. National City Bank, 61 S. Ct. Rep. 898 (1941). In this case, the Bank of Floyd has recovered property worth by its own estimate $863,350, plus a judgment for $212,729, making for a total recovery by the Bank in property and money of $1,076,079, all for a debt valued at $641,754.

In other words, the Bank of Floyd is seeking to be paid $434,325 more than it is owed!!!

Millions of Americans need the U. S. Supreme Court to assure them that something like this will not happen to them too.

II

The Bank states that the Martins are procedurally unfortunate in not raising certain issues as affirmative defenses in certain pleadings. However, the Bank of Floyd's Complaint basically alleged the Martins owed the Bank money. The Martins filed an Answer denying that the Martins owed any money to the Bank. At trial, the Bank, during its case in main, never proved the Martins owed any money to the Bank, because the Bank failed to introduce any evidence that the value of the mortgaged property was less than what the Bank was owed. The Bank did, during its case in main, produce evidence of what the Bank paid itself for the property at a so-called "sale". However, this evidence was immaterial and irrelevant toward the Bank

proving that the Martins constitutionally owed any money to the Bank, which could only have been proven by the introduction of evidence by the Bank that the value of the mortgaged property was less than what the Bank was owed.

It was incumbent on the Bank to prove this fact as a part of its case. It failed to do so and, thereby, lost its case against the Martins, whose motion for a directed verdict at the conclusion of the Bank's case in main should have been granted by the trial court. The Bank now, artfully, tries to put up a smoke screen by saying its failure to prove its case was something that the Martins had to raise procedurally as an affirmative defense. But, the hard fact remains that the Bank never proved the Martins owed any money to the Bank because it never introduced any evidence that the property was worth less than the Bank was owed. Therefore, no defense by the Martins was

necessary.

Contrary to the assertion of the Bank, the Martins did comply with the Virginia Rules of Procedure mentioned by the Bank, because the Martins filed an Answer denying "every allegation not specifically admitted herein" and demanding "strict proof of each such allegation". There was no proof, at trial by the Bank, that it was constitutionally owed any money, so the Bank lost, making it moot for the Martins to put on a defense.

III

The final version of the Martins' Petition is substantially the same as the prior two. The only difference (Pages 32-36) was a compression of the trial excerpts found in the appendix of versions 1 and 2.

The Martins could now raise as a procedural issue that the Bank of Floyd's Brief in Opposition should not be accepted, because it violates Rule 33 of the Supreme Court of the United States in that:

(1) there are more than 10 characters per inch therein;

(2) the lines are not double spaced; and

(3) the paper is not 6 1/8 inches wide (it is only 6 inches).

However, in the interest of this matter proceeding to a determination on the substantive constitutional issues by the Supreme Court, the Martins hereby waive any procedural objection thereto and urge the Supreme Court to accept the Bank's procedurally defective Brief.

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